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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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11 TRIPLE A MACHINE SHOP INC.,

No. C 07-02371 CRB

12 Plaintiff,

**ORDER**

13 v.

14 THOMAS G. OLSEN,

15 Defendant.  
16 \_\_\_\_\_/

17 This case arises from a certification of facts filed by Administrative Law Judge  
18 (“ALJ”) Paul Mapes pursuant to 33 U.S.C. § 927(b), setting forth facts justifying sanctions  
19 against the defendant, Thomas Olsen. Olsen, proceeding pro se, moves to dismiss the  
20 certification, which was incorporated into a complaint filed by the plaintiff Triple A Machine  
21 Shop, or in the alternative for summary judgment. In addition, Olsen moves for a  
22 competency hearing to determine whether he is sufficiently competent to proceed pro se.  
23 Because Olsen’s arguments in favor of dismissal are unpersuasive, his motion to dismiss is  
24 DENIED. Although the Court is dubious of Olsen’s claim of incompetence, Olsen will be  
25 permitted to present evidence of incompetence when the Court holds a hearing to consider  
26 the evidence warranting sanctions on Wednesday, January 9, 2008 at 3:30pm. The hearing  
27 scheduled for Friday, December 14, 2007 is VACATED.  
28

**BACKGROUND**

The factual background underlying this case is amply laid out in Judge Mapes' certification of facts. See Certification of Facts (hereinafter "Certification"). In sum, Olsen filed a claim for injuries allegedly suffered while working for Triple A under the Longshore and Harbor Workers' Compensation Act in 1978 (hereinafter "LHWCA"). Id. at 2. In 1982, Olsen was awarded permanent disability benefits, but in the late 1990s, Triple A obtained information suggesting that Olsen was not in fact totally disabled and that he had been profitably operating various businesses. See id. Accordingly, in 1999, Triple A filed a request seeking to have Olsen's payments reduced or terminated pursuant to 33 U.S.C. § 922, which permits a modification of disability benefits "on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner."

Almost immediately after Triple A requested a modification in the award, Olsen began engaging in a series of acts that the ALJ concluded were "plainly intended to prevent or at least delay Triple A's efforts to exercise its statutory right to have a hearing on its claim." Certification at 3. This conduct included, inter alia: (1) falsely alleging that Triple A's counsel had privileged discussions with Olsen about possible representation, in an attempt to disqualify the attorney; (2) attempting to force the recusal of the ALJ by filing a civil complaint against the judge; (3) attempting to intimidate the ALJ by threatening to cause the judge "various types of harm"; (4) making false allegations about statements made by a retired ALJ in Olsen's favor; (5) making false allegations about statements made by a physician, in an effort to bolster the merits of his case; (6) altering, without authorization or notification, forms drafted on Department of Labor letterhead that would have released necessary medical records belonging to Olsen; (7) failing to submit telephone records in response to the ALJ's order; (8) failing to identify the physician who allegedly diagnosed Olsen as having cancer; (9) failing to promptly report discharge from a hospital; (10) repeatedly filing frivolous complaints and appeals for the purpose of delay; (11) making allegations about opposing counsel's ethical integrity and abuse of substances; (12) and threatening witnesses. See id. at 3-11.

Judge Mapes attempted to impose sanctions on Olsen by requiring that he obtain a lawyer before proceeding and by suspending Olsen's disability benefits until a trial on the proposed modification could be held, but the Department of Labor's Benefits Review Board held that because § 927(b) provides a mechanism for punishing disruptive conduct, ALJs do not have the authority to impose other or additional sanctions on litigants and must instead refer all sanctionable conduct to federal district courts. See id. at Attachment 7. Accordingly, Judge Mapes certified the underlying facts to this Court in order to obtain appropriate sanctions.

The Certification was filed in this Court on January 3, 2007. On May 1, 2007, Triple A filed a complaint for sanctions, which incorporated the Certification as an exhibit.

## DISCUSSION

### A. Motion to Dismiss/for Summary Judgment

Olsen forwards three arguments in favor of dismissing Triple A's complaint, none of which are persuasive. First, Olsen argues that the Court lacks subject matter jurisdiction over actions brought under the LHWCA. Second, Olsen submits that any action for sanctions can only be prosecuted by the federal government, not by a private party. Finally, Olsen argues that the doctrine of res judicata precludes relief in this case because identical relief has been requested and rejected in prior cases.

#### *1. Subject Matter Jurisdiction*

Citing Thompson v. Potashnick Construction Co., 812 F.2d 574, 576 (9th Cir. 1987), Olsen asserts that the Court lacks jurisdiction over LHWCA actions. In Thompson, the Ninth Circuit explained that workers' compensation claims subject to the LHWCA are filed with the deputy commissioner and disputes requiring a hearing are referred to ALJs. Id. at 575-76 (citing 33 U.S.C. § 919). The role of district courts within this scheme "is limited." Id. at 576. However, Congress has provided three bases for a district court to exercise its jurisdiction to enforce orders issued by an ALJ pursuant to LHWCA. A-Z Int'l v. Phillips, 323 F.3d 1141, 1145 (9th Cir. 2003). Of particular relevance here, a district court has jurisdiction to "punish as contempt of court any disobedience or resistance to a lawful order

1 or process issued in the course of administrative procedures under [LHWCA]” pursuant to §  
 2 927(b). *Id.* at 1145-46 (quoting Stevedoring Services of America, Inc. v. Eggert, 953 F.2d  
 3 552, 555 (9th Cir. 1992)) (bracket in original). Thus, Congress has expressly created subject  
 4 matter jurisdiction where, as here, the ALJ certifies facts to the appropriate district court  
 5 demonstrating that “any person in proceedings before a deputy commissioner or Board [has]  
 6 disobey[ed] or resist[ed] any lawful order or process, or misbehave[d] during a hearing or so  
 7 near the place thereof as to obstruct the same, or neglect[ed] to produce, after having been  
 8 ordered to do so, any pertinent book, paper, or document.” 33 U.S.C. § 927(b).

## 9 *2. Form of Complaint*

10 Olsen takes issue with the fact that Triple A, rather than the United States  
 11 government, is prosecuting this action for sanctions. According to Olsen, the LHWCA  
 12 precludes parties other than the federal government from pursuing legal matters in district  
 13 court and does not permit “a party to substitute itself in place stead of the U.S. Attorney or  
 14 the Attorney General.” Motion at 3.

15 The Ninth Circuit has not yet addressed the procedure to be employed as to how the  
 16 ALJ’s certified facts should be brought to the attention of the relevant district court.  
 17 However, in dicta, the Ninth Circuit concluded that since the federal rules of civil procedure  
 18 provide that “[a] civil action is commenced by filing a complaint with the [district] court,”  
 19 Fed. R. Civ. P. 3, “[i]t would . . . appear that someone – the Board, the Director, or a party –  
 20 must file an initial pleading with the district court which incorporates the ALJ’s certified  
 21 facts.” A-Z Int’l v. Phillips, 179 F.3d 1187, 1194 n.9 (9th Cir. 1999) (emphasis added).

22 Olsen sets forth no persuasive arguments explaining why the Ninth Circuit’s analysis  
 23 is off the mark. Triple A, as the party currently paying Olsen’s benefits, has a direct and  
 24 tangible interest in seeing civil sanctions imposed to compel Olsen to submit to a hearing on  
 25 the merits of their claim.

26 Moreover, § 927(b) states that when an ALJ properly certifies facts to the district  
 27 court, the court “shall thereupon in a summary manner hear the evidence as to the acts  
 28 complained of.” 33 U.S.C. § 927(b) (emphasis added). Congress’ use of an imperative verb

1 – without providing for additional criteria before the certification must be heart – suggests  
2 that imposing a limitation on the parties who can prosecute a case for sanctions would  
3 contravene Congressional intent. Therefore, Olsen’s argument that Triple A cannot  
4 prosecute this action must be rejected.

5 *3. Res Judicata*

6 Olsen requests that the Court dismiss Triple A’s lawsuit on the basis of res judicata.  
7 According to Olsen, the sanctions sought in this proceeding “were sought word-fir[sic]-word  
8 in the 10th circuit, then again twice in front of the 9th circuit, where the circuit court rules  
9 [sic] no monetary sanctions.” Motion at 4.

10 Res judicata applies when an earlier suit “(1) involved the same ‘claim’ or cause of  
11 action as the later suit, (2) reached a final judgment on the merits, and (3) involved identical  
12 parties or privies.” Sidhu v. Flecto Co., 279 F.3d 896, 900 (9th Cir. 2002). Olsen has not  
13 identified a prior suit that involved the same claim or cause of action as this case. Olsen’s  
14 statement that the same sanctions were sought in other cases is a blatant misrepresentation.  
15 Triple A did seek sanctions in the 10th Circuit against Olsen in 2002, but they have  
16 submitted a copy of their brief before that court, which plainly establishes that Triple A  
17 sought sanctions for Olsen’s decision to file a potentially-frivolous appeal. See Opposition at  
18 Exh. 1. Triple A did not seek sanctions pursuant to the ALJ’s certification of facts in this  
19 case.

20 In a related argument, Olsen states that because sanctions have already been sought,  
21 “jeopardy has already attached.” Motion at 5. According to Olsen, “even the ALJ who  
22 referred these alleged contemptible acts notes in his own ruling that” jeopardy attached. See  
23 id. at 4-5. Again, this allegation appears to be a baseless misrepresentation. Nowhere did  
24 Judge Mapes suggest that the double jeopardy clause barred sanctions in this case, nor would  
25 he since jeopardy does not attach in civil proceedings. See Hudson v. United States, 522  
26 U.S. 93, 99 (1997) (“The Clause protects only against the imposition of multiple criminal  
27 punishments for the same offense, and then only when such occurs in successive  
28 proceedings.”) (emphasis in original, citations omitted).

1 In sum, none of the arguments forwarded by Olsen in his motion to dismiss are  
2 persuasive. Accordingly, the motion is DENIED.

3 B. Motion for a Competency Hearing

4 Olsen has also filed a motion for a competency hearing, requesting that these  
5 proceedings be stayed “until such time as I become medically able to rationally and  
6 intelligently, knowingly, and timely address the order(s) of the court.” Motion at 2.

7 Rule 17(c) of the Federal Rules of Civil Procedure provides that “[t]he court shall  
8 appoint a guardian ad litem for an infant or incompetent person not otherwise represented in  
9 an action or shall make such other order as it deems proper for the protection of the infant or  
10 incompetent person.” “The preferred procedure when a substantial question exists regarding  
11 the mental competence of a party proceeding pro se is for the district court to conduct a  
12 hearing to determine whether or not the party is competent, so that a representative may be  
13 appointed if needed.” Krain v. Smallwood, 880 F.2d 1119, 1121 (9th Cir. 1989).

14 After reviewing the content of Olsen’s pleadings submitted to this Court, the Court  
15 concludes that there is not a substantial question regarding Olsen’s mental competence. As  
16 Judge Mapes found, Olsen’s goal since 2000 has been to prevent or at least delay Triple A’s  
17 efforts to exercise its right to have a hearing on its claim that Olsen’s disability benefits  
18 should be reduced or terminated. See Certification at 3. In light of that goal, it is hard to  
19 imagine an advocate who could have more competently and successfully forwarded Olsen’s  
20 interests. Through a series of cumbersome – yet capable – filings and delay tactics, Olsen  
21 has successfully delayed a hearing on Triple A’s claim for seven years. The competence of  
22 Olsen’s representation cannot be questioned.

23 Nonetheless, in an abundance of caution, the Court will allow Olsen to present  
24 evidence of incompetence at the Court’s hearing on Judge Mapes’ certification of facts on  
25 Wednesday, January 9, 2008 at 3:30pm. Unless Olsen presents persuasive evidence and  
26 testimony demonstrating that he is mentally incompetent, the Court will conclude that the  
27 appointment of a guardian ad litem is unnecessary.  
28

**CONCLUSION**

The defendant's motion to dismiss is DENIED. Although the Court is inclined to conclude that Olsen is competent, Olsen will be permitted to present evidence of incompetence on January 9, 2008 when the Court, in a "summary manner," "hear[s] the evidence as to the acts complained of." 33 U.S.C. § 927(b). At the January 9 hearing, the parties shall be prepared to address whether and why the Court should not adopt the facts certified by Judge Mapes. The parties shall also be prepared to present evidence regarding the amount and frequency of disability benefits received by Olsen pursuant to the 1982 benefits award, Office of Workers' Compensation Programs claim number 13-056511.

**IT IS SO ORDERED.**

Dated: December 11, 2007



CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE